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Attorneys for Public Utility District No. 1 of Douglas County, Washington

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON**

In re: } No. 18-03197-FPCCHAPTER 11
GIGA WATT INC, a Washington } DECLARATION OF KATHRYN
corporation, } R. MCKINLEY IN SUPPORT OF
Debtor. } OBJECTION TO COMMITTEE'S
} MOTION FOR AUTHORIZATION
} TO FILE ADVERSARY
} PROCEEDING AGAINST
} DOUGLAS COUNTY PUD FOR
} THE BENEFIT OF THE
} BANKRUPTCY ESTATE

I, KATHRYN R. MCKINLEY, state as follows:

1. I am the attorney for Public Utility District No. 1 of Douglas County, Washington (the "District"), am over the age of eighteen (18), have personal knowledge of the matters contained in this Declaration, and am competent to testify.

**DECLARATION OF KATHRYN R. MCKINLEY IN SUPPORT
OF OBJECTION TO COMMITTEE'S MOTION FOR
AUTHORIZATION TO FILE ADVERSARY PROCEEDING
AGAINST DOUGLAS COUNTY PUD FOR THE BENEFIT OF
THE BANKRUPTCY ESTATE- 1**

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1 2. Attached to this Declaration as Exhibit A is a true and correct copy of
2 the Order Granting in Part Defendants' Renewed Motion for Summary Judgment
3 and Denying Plaintiffs' Motion for Summary Judgment entered in the United
4 States District Court for the Eastern District of Washington on March 12, 2020, in
5 Case No. 2:18-CV-390-RMP, *Blocktree Properties, LLC v. Pub. Util. Dist. No. w*
6 *of Grant Cty.*

9 3. In the first half of 2019, I had ongoing conversations with the
10 Trustee's counsel, Pamela Egan, regarding the Pangborn Interconnection and
11 Services Agreement and its termination. On June 14, 2019, Mr. Waldron and Ms.
12 Egan met with Douglas County Public Utility District personnel, general counsel
13 and me. At that meeting the District provided information about the termination
14 and the timing and costs of building a substation to serve the Pangborn site.

17 4. In a subsequent telephone conversation, Ms. Egan told me that she
18 had analyzed the termination provisions of the Agreement and had determined that
19 the District had the right to terminate the Agreement for any reason or no reason on
20 one years' notice. Ms. Egan indicated that the Trustee did not intend to pursue an
21 action against the District.

24 5. On August 29, 2019, the Court held a telephonic hearing on the
25 Trustee's motion for approval of unsecured super-priority credit to reopen the Giga

27 **DECLARATION OF KATHRYN R. MCKINLEY IN SUPPORT**
OF OBJECTION TO COMMITTEE'S MOTION FOR
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AGAINST DOUGLAS COUNTY PUD FOR THE BENEFIT OF
THE BANKRUPTCY ESTATE- 2

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1 Watt TNT site. I participated in that hearing. At that hearing, from the 32:08
2 minute mark to the 38:55 minute mark, the Trustee testified under oath as to why
3 he was pursing such a motion on the TNT site and not on the Pangborn site. Mr.
4 Waldron state that Pangborn was not operational, that there was no power to the
5 facility, and that it was still a year or two out. He further stated that he had spent a
6 substantial amount of time looking at the facts and the law with regard to the
7 Pangborn site, and that he had met with the District and its lawyers on more than
8 one occasion. He went on to state:

9
10
11
12 We've gone through the prepetition termination of the contract at
13 Pangborn. The problem is that it appears that the prepetition
14 termination was, uh, appropriate under the circumstances, and that
the PUD had the right to do so.

15 *Audio recording of hearing, August 29, 2019, 36:09 minute mark [ECF No. 362].*

16 I DECLARE UNDER PENALTY OF PERJURY THAT THE
17 FOREGOING IS TRUE AND CORRECT.

18
19 Executed on April 27, 2020.

20
21
22 /s/ Kathryn R. McKinley
23 Kathryn R. McKinley

24
25
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27 **DECLARATION OF KATHRYN R. MCKINLEY IN SUPPORT
28 OF OBJECTION TO COMMITTEE'S MOTION FOR
AUTHORIZATION TO FILE ADVERSARY PROCEEDING
AGAINST DOUGLAS COUNTY PUD FOR THE BENEFIT OF
THE BANKRUPTCY ESTATE- 3**

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